



**FILED**

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**A2207002**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Next Level Internet, Inc. for a certificate of public convenience and necessity to provide Voice over Internet Protocol (VoIP) service as a reseller on a statewide basis.

A.

**APPLICATION OF NEXT LEVEL INTERNET, INC.**

**[PUBLIC VERSION]**

John L. Clark  
Attorney at Law  
864 Las Trampas Road  
Lafayette, California 94549  
925.367.5808  
jlc@johnlclarklaw.com

Attorney for Next Level, Internet, Inc.

Dated: June 27, 2022

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Next Level Internet, Inc. for a certificate of public convenience and necessity to provide Voice over Internet Protocol (VoIP) service as a reseller on a statewide basis.

A.

**APPLICATION OF NEXT LEVEL INTERNET, INC.**

Pursuant to Article I of Chapter 5 of the Public Utilities Code (Section 1001 et seq.), Next Level Internet, Inc. (“Next Level” or “Applicant”) hereby requests that the Commission issue a certificate of public convenience and necessity (“CPCN”) authorizing Applicant to provide Voice over Internet Protocol (VoIP) service as a reseller on a statewide basis. Next Level’s VoIP intrastate service provides customers with the ability to complete communications between all points in the state, including between points within local exchange areas and between points in different exchange areas, as defined by reference to traditional telephone service boundaries.

In support of its Application, Next Level provides the following information:

**I. Information Regarding Applicant - Rule 2.1(a)**

Applicant’s full legal name is Next Level Internet, Inc. Next Level is a California corporation. Its address is address is 10967 Via Frontera, San Diego, CA 92150, and its telephone number is (858) 432-2740.

Next Level is a nationwide cloud-based unified communications and internet service provider, serving small, medium, and enterprise business customers. Its services include hosted voice services, video collaboration, chat capabilities, contact center, analytics, and other

related functions and services. In February 2022, Next Level was acquired by T3 Communications, Inc. (“T3”). During due diligence efforts prior to the acquisition, it was determined that Next Level’s hosted voice service included an intrastate VoIP component that had been provided in California since 2011, but that Next Level, operating under the belief that its services were not subject to regulatory requirements, had neither registered with the Commission as a VoIP provider nor collected, reported, or remitted Public Purpose Program Surcharges or User Fees (collectively “Surcharges”). Based on this information, Next Level, under the direction of its new owner, T3, is seeking the required operating authority and commits fully comply with all surcharge reporting and other requirements going forward. Further, concurrently herewith, NextLevel is initiating efforts to identify and pay all past-due Surcharges, including applicable interest and penalties.

**II. Contact for Correspondence and Communications - Rule 2.2(b)**

All communications, correspondence, and pleadings with respect to this application should be directed to:

John L. Clark  
Attorney at Law  
864 Las Trampas Road  
Lafayette, California 94549  
925.367.5808  
jlc@johnlclarklaw.com

**III. Categorization, Need for Hearing, Issues, Schedule - Rule 2.1(c)**

Proposed Category: Net Level proposes that the Commission classify this proceeding as ratesetting. Although this Application does not affect rates, the definitions of “adjudicatory” or “quasi-legislative” clearly do not apply to this Application. Under the Commission’s rules, when a proceeding does not clearly fit any of the categories, it should be conducted under the ratesetting procedures. (See, Rule 7.1(e)(2).)

Need for hearing: No hearing is needed for the Commission to act on Next Level's request.

Issues to be considered: Next Level submits that the only issues to be resolved in this proceeding are whether Next Level has met the Commission's requirements for authorization to provide the proposed service, specifically:

- (1) Whether Next Level has demonstrated sufficient technical and managerial ability to conduct the proposed operations;
- (2) Whether Next Level has met the requisite financial showing required of applicants; and
- (3) Whether Next Level's proposed service will serve the public convenience and necessity.

Next Level submits that the information in this Application demonstrates that Next Level meets all of the requirements for issuance of the requested operating authority and that no further filings or proceedings are required.

Proposed Schedule: Next Level respectfully urges the Commission to act on its application as quickly as practicable, in accordance with the following schedule:

August 5, 2022 (approx.)	Final date for protests.
August 25, 2022 (approx.)	Prehearing conference
September 10, 2022 (approx.)	Scoping memo issued; application deemed submitted.
November 15, 2022 (approx.)	Proposed decision issued granting application.

#### **IV. Other Information - Rule 2.1(d)**

##### **(1) Technical and Managerial Qualifications**

NextLevel's operations will be managed by a highly-qualified team telecommunications professionals with many years of extensive experience and expertise, including: Derek Gietzen, its President; Arthur L. Smith, its Chief Executive Officer, Kathleen Keller, its Secretary, and Antonio Estrada, its Chief Financial Officer.

Resumes showing all employment for these individuals are included in Exhibit A.

##### **(2) Fitness**

Attached as Exhibit B is a sworn statement submitted pursuant to Ordering Paragraph 14 of D.13-05-035.

##### **(3) Exemptions**

The Commission has never formally established a regime for regulation of VoIP services or providers. Prior to approximately March or April, 2021, VoIP providers were subject to a simple registration process, which was originally established solely for the purpose of administering Public Purpose Program ("PPP") surcharge reporting and payments. Then, in approximately March or April, 2021, the Commission's Communications Division announced that new VoIP providers (those that had not previously registered), would be required to apply for operating authority under either the existing nondominant interexchange carrier ("NDIEC") registration process established pursuant to Public Utilities Code § 1013 or the CPCN application process. However, to Applicant's knowledge, neither the Commission nor the Communications Division has clearly indicated, except in a few decisions governing outage reporting, network resiliency, and responses to declared emergencies, what regulatory requirements apply to VoIP providers, specifically including, among other things, whether prior approval procedures under the provisions of Public Utilities Code §§ 816-830 (pertaining to the issuance of stocks and

securities) and Public Utilities Code §§ 851-854 (pertaining to the transfer or encumbrance of utility assets, mergers and acquisitions, and transfers of control) apply.

Assuming that Next Level might be subject to these approval requirements, Next Level respectfully submits that the same exemptions from these provisions that have been adopted for NDIECs and competitive local carriers, should apply to Next Level, as a VoIP provider. That is, the Commission should explicitly hold that Next Level is exempt from Public Utilities Code §§ 816-830 and Public Utilities Code § 851 (when a transfer or encumbrance of assets is for the purpose of securing debt). In addition, Next Level should be exempted from any requirement to maintain its books and records in accordance with the Uniform System of Accounts specified in 47 CFR Part 32.

#### **(4) Performance Bond**

Included as part of the Verification of this Application is a sworn statement submitted pursuant to Ordering Paragraph 4 of D.13-05-035, attesting that Next Level will comply with the performance bond requirement, should the Commission determine that this requirement applies to VoIP providers.

#### **V. Organization and Qualification to Transact Business - Rule 2.2**

A copy of Next Level's Articles of Incorporation and a current Certificate of Status (Good Standing) are attached as Exhibit C.

#### **VI. CEQA Compliance - Rule 2.4**

Next Level's Proponent's Environmental Assessment ("PEA") is attached as Exhibit D.

#### **VII. Description of Proposed Construction - Rule 3.1(a)**

Next Level will operate as a reseller and does not propose to engage in any construction.

**VIII. List of Competitors, Cities, and Counties - Rule 3.1(b)**

Consistent with Decision No. 97-06-107, Next Level believes that this application, like other applications for competitive provider authority, should be exempt from the requirements of this rule.

**IX. Map - Rule 3.1(c)**

A map illustrating Next Level's proposed, statewide service area is attached hereto as Exhibit E.

**X. Permits - Rule 3.1(d)**

No discretionary franchises or health or safety permits will be required for the provision of the services described herein.

**XI. Public Convenience and Necessity - Rule 3.1(e)**

Next Level submits the following in support of its belief that the public convenience and necessity require Commission approval of its application:

A. Next Level's operations and services meet customers' established requirements for VoIP services.

B. Commission approval of the instant application will reaffirm the principle of competition in the telecommunication market within California and will benefit existing and new customers through ongoing availability of innovative, high-quality service.

C. 47 U.S.C. § 253(a) establishes a national policy favoring competition in the provision of telecommunication services and prohibiting any state regulation or other legal requirement that prohibits or has the effect of prohibiting any entity from providing a telecommunications service. This same national policy has effectively been extended by the Federal Communications Commission ("FCC") to include VoIP by virtue of the FCC's purported prohibition against state regulation of VoIP. Thus, although the Commission has not

recognized the FCC's preemptive action, approval would nonetheless be in furtherance of existing national telecommunications policy.

**XII. Estimated Cost of Construction; Feasibility - Rule 3.1(f)**

Next Level does not propose to construct any facilities.

**XIII. Financial Ability and Financing Information - Rule 3.1(g)**

Next Level has submitted under seal as Exhibit F to this application, a financial showing demonstrating cash resources well in excess of \$25,000, which is the amount specified by the Commission for new entrants seeking authority to resell telecommunications. Next Level will not be required to pay any deposits to underlying providers; however, the foregoing financial showing is more than sufficient to cover deposits in the unlikely event they are required in the future.

**XIV. Statement of Proposed Rates - Rule 3.1(h)**

Next Level will not provide "basic service," as currently defined by the Commission, or any other services for which a tariff is required under the Commission's current regulatory program.

**XV. General Order 104-A - Rule 3.1(i)**

No matters that must be reported pursuant to section 2 of G.O. 104-A, have occurred or are expected.

**XVI. Number of Customers - Rule 3.1(j)**

Next Level estimates that it will serve approximately 1,000 customers during the first year of its operations under a CPCN and 1,500 during the fifth year.

WHEREFORE, Next Level requests that the Commission grant this application and issue a certificate of public convenience and necessity authorizing it to provide VoIP service as a reseller on a statewide basis.



Respectfully submitted June 27, 2022.

John L. Clark  
Attorney at Law  
864 Las Trampas Road  
Lafayette, California 94549  
925.367.5808  
[jlc@johnlclarklaw.com](mailto:jlc@johnlclarklaw.com)

*/s/ John L. Clark*

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John L. Clark

Attorneys for Next Level Internet, Inc.

## **VERIFICATION**

I, Derek Gietzen, am the Applicant's President, and declare that the facts stated herein are of my personal knowledge.

I affirm that Applicant:

- Agrees to comply with all federal and state statutes, rules, and regulations, for a Certificate of Public Convenience and Necessity (CPCN) and state contractual rules and regulations, if granted the request as stated in this Application;
- Certifies that all information in the foregoing Application for a CPCN is true and correct;
- Agrees that in the event Applicant's request for a CPCN is granted and it is determined that a bond is required, Applicant will post a continuous performance bond (i.e., there will be no termination date on the bond) in the amount of \$25,000 issued by a corporate surety company authorized to transact surety business in California, and with the Commission listed as the obligee on the bond; and, further, that Applicant will provide a copy of the executed performance bond to the Director of the Communications Division with the written notification to the Commission of acceptance of operating authority;
- Although VoIP has not been determined to be a telecommunications service as defined in section 153 of the Federal Communications Act of 1934, as amended, (the "Act"), upon the FCC determination that VoIP is a

telecommunication service, Applicant will operate as an interstate common carrier as defined in section 153 of the Act and will be eligible to interconnect with the public switched telephone network pursuant to sections 251 and 252 of the Act; and

- If granted a CPCN, Applicant will operate as a telephone corporation as defined in Section 234(a) of the California Public Utilities Code ("Code") and obey the Code, and all of the Commission's rules, decisions and orders applicable to regulated telephone corporation operations.

I affirm and declare under penalty of perjury under the laws of the State of California, including Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure, that, to the best of my knowledge, all of the statements and representations made in this Application are true and correct.

Dated: June 27, 2022

  
Derek Gietzen, President

**EXHIBIT A**

**RESUMES**

## **Derek M. Gietzen – Work History**

President  
NextLevel Internet  
SAN DIEGO, CA  
January 2017 – Present

Pastor of Children's Ministry  
The Rock Church San Diego  
SAN DIEGO, CA  
January 2015 – January 2016

Administrative Director (Executive Pastor)  
Pastor of Children's Ministry  
SAN DIEGO, CA  
February 2010 – January 2015

Business Consultant  
DG Consulting  
SAN DIEGO, CA  
July 2007 – December 2009

President & CEO  
Vycera Communications, Inc.  
SAN DIEGO, CA  
March 1995 – June 2007

President & COO  
WXL Communications  
SAN DIEGO, CA  
March 1994 – Feb 1995

Vice President & General Manager  
Communications Telesystems International, Inc.  
SAN DIEGO, CA  
November 1992 - March 1994

Director of Marketing & Analytics  
ComSystems, Inc  
WESTLAKE, CA  
July 1988 - November 1992

## **Arthur L. Smith - Work History**

President & CEO

Digerati Technologies, Inc. (formerly ATSI Communications, Inc.)

San Antonio, Texas

07/2002 – Present

Chairman & CEO

ATSI Communications, Inc.

San Antonio, Texas

12/1993 – 07/2002

Chairman and CEO

Globalscape, Inc. (subsidiary of ATSI Communications, Inc.)

San Antonio, Texas

1996-2002

President

ATSI Comunicaciones, SA de CV (subsidiary of ATSI Communications, Inc.)

Mexico City, D.F.

1996 - 2002

Director of International Sales

GeoComm Partners, Inc.

San Antonio, Texas

6/1989 - 12/1993

Store Manager/Sales Associate/Computer Specialist

Radio Shack Corporation

Fort Worth, Texas

11/1983 - 5/1989

## **Antonio Estrada, Chief Financial Officer**

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### ***Employment History:***

February 1999 – Current - Digerati Technologies, Inc., a Nevada Corporation (“DTGI”). Formerly known as ATSI Communications, Inc.

November 2012 - Current - T3 Communications, Inc., a Nevada Corporation, a subsidiary of DTGI (“T3-NV”).

February 2022 – Current - Next Level Internet, Inc., a California Corporation, a subsidiary of T3-NV.

November 2020 – Current - Nexogy, Inc., a Florida Corporation, a subsidiary of T3-NV.

May 2018 – Current - T3 Communications, Inc., a Florida Corporation, a subsidiary of T3-NV (“T3-FL”).

July 2009 – Current - Shift8 Networks, Inc., a Texas Corporation, a subsidiary of T3-NV (“S8”).

### ***Biography:***

Mr. Estrada is a seasoned financial executive with over 23 years of experience in the telecommunications and oil and gas industries. Mr. Estrada’s vast experience includes SEC and financial reporting, modeling, strategic planning, grant writing, and cash management. Mr. Estrada served as the Sr. VP of Finance and Corporate Controller of Digerati, formerly known as ATSI Communications, Inc., from 2008 to 2013. From 1999 to 2008, Mr. Estrada served in various roles within ATSI, including International Accounting Manager, Treasurer, Internal Auditor, and Controller. Mr. Estrada graduated from the University of Texas at San Antonio, with a Bachelor of Business Administration, with a concentration in Accounting.

### ***Key Accomplishments:***

- Over 23 Years of Telecom Industry Experience and Accounting/Finance Experience
- 18 Years of CFO Public Company Experience with Over \$45 Million in Annual Revenue
- Completed 2 Acquisitions in the Oilfield Services Industry with Over \$40 Million in Annual revenue
- Completed 7 Acquisitions in the Telecom Industry

## **Kathleen Keller - Work History**

Mgr. of Accounting/Administration  
Digerati Technologies, Inc. (formerly ATSI Communications, Inc.)  
San Antonio, Texas  
05/2003 – Present

Director of Operations Administration/Contract Administrator  
ATSI Communications, Inc.  
San Antonio, Texas  
08/2002 – 01/2003

Contract Administrator/Sr. Executive Administrator  
ATSI Communications, Inc.  
San Antonio, Texas  
07/2000-08/2002

Contract Administrator  
ATSI Communications, Inc.  
San Antonio, Texas  
08/1997 – 07/2000

Director of Administration  
ATSI Communications, Inc.  
San Antonio, Texas  
1/1994 - 08/1997

Executive Assistant/Office Manager  
GeoComm Partners  
San Antonio, Texas  
03/1990 - 12/1993



## **EXHIBIT B**

### **SWORN STATEMENT**

Except as set forth in the attached Statement of Exceptions, neither Applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of Applicant, nor anyone acting in a management capacity for Applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been to my knowledge the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 et seq., 17200 et seq., or 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

Except as set forth in the attached Statement of Exceptions, neither Applicant, any affiliate, officer, director, partner, or owner of more than 10% of Applicant, nor any person acting in such capacity whether or not formally appointed, is being or has been investigated by

the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

I affirm and declare under penalty of perjury under the laws of the State of California, including Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure, that, to the best of my knowledge, the foregoing and all other statements and representations made in the Application are true and correct.

Dated: June <sup>30</sup>~~29~~, 2022

  
\_\_\_\_\_  
Derek Giatzen, President

## STATEMENT OF EXCEPTIONS

1. Derek M. Gietzen, Applicant's President, was the subject of Investigation (I.) 04-07-005 which was instituted by the Commission in 2004 into Vycera Communications, Inc. (U-5477-C) ("Vycera") and its officers and primary shareholders, which included Mr. Gietzen. The investigation concerned alleged violations of laws, rules, and regulations governing the manner in which consumers are switched from one provider to another and billed for telephone services or products. The matter was resolved through a Settlement Agreement approved by Decision 05-03-004.

As discussed in that Settlement, Mr. Gietzen had previously worked for Communications Telesystems International, Inc. ("CTS") before founding Vycera, previously known as Genesis Communications International, Inc. ("Genesis"). Mr. Gietzen's employment with CTS, which was, at the time a subject of a Commission staff investigation and a subsequent formal investigation I.95-02-043), was revealed in Genesis' 1995 application for a CPCN (A.95-03-061) and in its petition for authority to provide local exchange service in A.95-04-044.

Vycera filed a voluntary petition for relief under the Bankruptcy Law on June 15, 2007, in the United States Bankruptcy Court for the Southern District of California, designated Case No. 07-03121-LA7.


2. T3 Communications, LLC, a predecessor company, entered into a settlement with the Florida Public Service Commission in 2006 based on a failure to respond to a staff data request relating to the status of competition in Florida in apparent violation of Section 364.183(1), Florida Statutes. (See 2006 Fla. PUC LEXIS 266.) Applicant has no further knowledge regarding the alleged violation or settlement.

**EXHIBIT C**

**ORGANIZATIONAL DOCUMENTATION**

2175065

ARTICLES OF INCORPORATION  
OF  
Next Level Internet, Inc.

FILED   
In the office of the Secretary of State  
of the State of California

AUG 23 1999

  
BILL JONES, Secretary of State

I

The name of this corporation is Next Level Internet, Inc.

II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

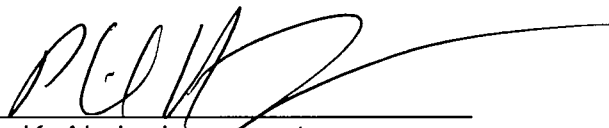
III

The name and address in the State of California of this corporation's initial agent for service of process is:

Jerry Morris  
11745 Corte Sosegado  
San Diego, California 92128

IV

The corporation is authorized to issue only one class of shares of stock; and the total number of shares of stock which this corporation is authorized to issue is 1,500 at \$1.00 par value per share.

  
Philip K. Akalp, Incorporator



# Secretary of State Certificate of Status

I, SHIRLEY N. WEBER, PH.D., California Secretary of State, hereby certify:

<b>Entity Name:</b>	NEXT LEVEL INTERNET, INC.
<b>Entity No.:</b>	2175065
<b>Registration Date:</b>	08/23/1999
<b>Entity Type:</b>	Stock Corporation - CA - General
<b>Formed In:</b>	CALIFORNIA
<b>Status:</b>	Active

The above referenced entity is active on the Secretary of State's records and is authorized to exercise all its powers, rights and privileges in California.

This certificate relates to the status of the entity on the Secretary of State's records as of the date of this certificate and does not reflect documents that are pending review or other events that may impact status.

No information is available from this office regarding the financial condition, status of licenses, if any, business activities or practices of the entity.



**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of May 31, 2022.

**SHIRLEY N. WEBER, PH.D.**  
Secretary of State

**Certificate No.:** 017111519

To verify the issuance of this Certificate, use the Certificate No. above with the Secretary of State Certification Verification Search available at [bizfileOnline.sos.ca.gov](http://bizfileOnline.sos.ca.gov).

## **EXHIBIT D**

### **PROPONENT'S ENVIRONMENTAL ASSESSMENT**

Next Level does not propose to engage in any construction activities. Therefore, it can be seen with certainty that there is no possibility that grant of the instant application may have a significant adverse effect on the environment.

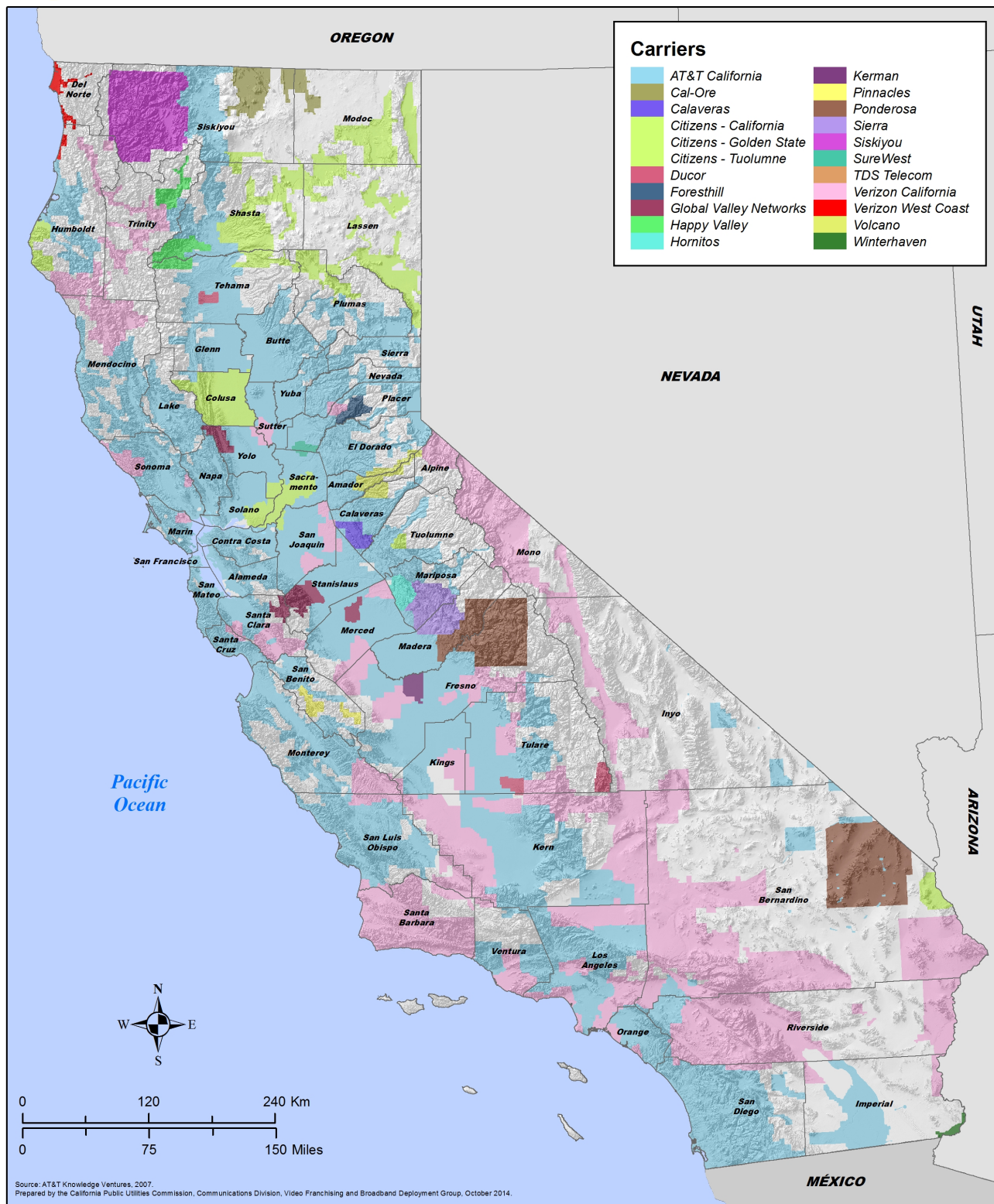
**EXHIBIT E**

**SERVICE AREA MAP**





# INCUMBENT LOCAL EXCHANGE CARRIER TERRITORY IN CALIFORNIA - 2014



**EXHIBIT F**

**FINANCIAL SHOWING**

**CONFIDENTIAL**

**[FILED UNDER SEAL]**